IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.886 OF 2006

Bhagyalaxmi Sahakari Pat Sanstha Ltd. ...Appellant

Versus

Manmad Nagar Parishad, Manmad,
through Chief Officer Manmad,
District Nashik. ...Respondent

Shri P.N.Joshi for the Appellant.
Shri B.D.Joshi for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : JULY 05, 2007.

P.C.:

1. Heard the Advocates appearing for the parties The Appellant is the original Plaintiff in a suit for perpetual injunction. The case of the Appellant-Plaintiff is that the Respondent Municipal Council passed a resolution by which a lease in respect of the suit property was granted in favour of the Appellant-Plaintiff. According to the Appellant-Plaintiff, a sum of Rs.50,000/- was accordingly paid by the Appellant-Plaintif to the Respondent. It is contended that the Respondent Municipal Council executed an agreement in favour of the Appellant. It is stated that the Appellant-Plaintiff was lawfully put in possession of the suit property.

2. The suit was resisted by the Respondent by contending that the possession was never handed over to the Appellant-Plaintiff and the resolution on which the

Appellant was relying upon is illegal.

3. The trial Court dismissed the suit and the decree of the trial Court has been confirmed by the Appellate Court. The submission of the learned Advocate for the Appellant is that admittedly there the resolution passed by the Respondent -Council for grant of lease was acted upon by the Respondent-Council by accepting a sum of Rs.50,000/- from the Appellant and by putting the Appellant in possession. He submitted that merely because the said resolution was not forwarded to the State Government for sanction, it cannot be said that the same is not binding on the Respondent-Council. He submitted that the Respondent has no right to dispossess the Appellant.

4. I have considered the submissions. According to the case of the Appellant the Respondent-Council granted the lease in its favour for a period of 33 years. In view of mandate of section 91(1) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 such a lease could not have been created in favour of the Appellant-Plaintiff without the prior sanction of the State Government. The Agreement on which reliance is placed by the Appellant is not signed by the Chief Officer of the Respondent and that is the finding of fact recorded against the Appellant.

5. The Appellant-Plaintiff approached the Court by contending that he was a lessee for a period of 33 years and sought injunction on the basis of its alleged right as lessee. The Courts below have rightly held that there could not have been a lease created in favour of the Appellant-Plaintiff. After having failed to establish that there was a valid and legal lease in favour of the Appellant, the Courts below were justified in not granting relief of perpetual injunction.

6. No substantial question of law arises. Second Appeal is accordingly dismissed.

7. At this stage, the learned Advocate for the Appellant states that the decision in the Second Appeal should not preclude the Plaintiff from filing an appropriate proceedings for recovery of the amount allegedly paid to the Respondent. If the Appellant-Plaintiff has a right to recover the said amount, it is obvious that the impugned Decrees and the confirmation thereof in the Second Appeal will not come in the way of the Appellant in taking out appropriate proceedings for recovery of the amount. It will be open for the Respondent to contest such proceedings, if any, on all permissible grounds.

JUDGE